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FILED
MADERA SUPERIOR COURT

NOV 29 2011
BONNIE THOMAS

CLERK

DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MADERA

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. Debbie Raphael,
Director, California Department of Toxic
Substances Control,**

Plaintiff,

v.

**BALTIMORE AIRCOIL COMPANY,
INC., a Delaware Corporation.**

Defendant.

Case No. MCV057859

~~PROPOSED~~ **JED**
FINAL JUDGMENT AND
PERMANENT INJUNCTION PURSUANT
TO STIPULATION

(Code of Civil Procedure § 664.6)

Plaintiff the People of the State of California, ex rel. Debbie Raphael, Director, California Department of Toxic Substances Control ("DTSC") and Defendant Baltimore Aircoil Company, Inc. ("BAC"), collectively "Parties", having consented to the entry of this Final Judgment ("Final Judgment") prior to the taking of any proof and without a trial or adjudication of any fact or law herein, and

The Court having considered the Complaint for Civil Penalties and Injunctive Relief, the Stipulation for Entry of Final Judgment on Consent, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1 **1. JURISDICTION**

2 Jurisdiction exists over this matter pursuant to Health & Safety Code sections 25181,
3 25189, and 25189.2 and venue is proper pursuant to Health & Safety Code section 25183.

4 **2. APPLICABILITY**

5 The provisions of this Final Judgment and the underlying Stipulation for Entry of Final
6 Judgment on Consent (which is attached hereto as Exhibit A and incorporated by reference), shall
7 apply to and be binding on BAC, its subsidiaries and divisions, its parent companies, its officers
8 and directors, its agents, employees, contractors, consultants, successors, assignees, and
9 representatives, and all persons, partners, corporations and successors thereto, or other entities,
10 acting by, through, under, or on behalf of BAC and upon DTSC and any successor agency of
11 DTSC that may have responsibility for and jurisdiction over the subject matter of this Final
12 Judgment.

13 **3. MONETARY SETTLEMENT REQUIREMENTS**

14 3.1 BAC shall pay DTSC the sum of Seven Hundred and Fifty Thousand Dollars
15 (\$750,000) in civil penalties ("the Settlement Payment"), within thirty (30) calendar days of entry
16 of this Final Judgment.

17 3.2 The Settlement Payment required under this Final Judgment shall be made by
18 cashier's check, payable to the "California Department of Toxic Substances Control," and mailed
19 to:

20 Cashier
21 Accounting Office
22 Department of Toxic Substances Control
23 P.O. Box 806
24 Sacramento, CA 95812-0806

25 A copy of the check shall be sent to:

26 Charles A. McLaughlin, Performance Manager
27 State Oversight and Enforcement Branch
28 Enforcement and Emergency Response Program
29 Department of Toxic Substances Control
30 8800 Cal Center Drive, MS R1-3
31 Sacramento, CA 95826-3200

1 Kirk McInnis
2 Deputy Attorney General
3 Office of the Attorney General
4 1515 Clay Street, 20th Floor
5 Oakland, CA 94612-0550

6 The check shall bear the name of this case and court number.

7 3.3. BAC shall be and hereby is deemed liable for, and shall pay DTSC, \$1,000 per day
8 for the first seven (7) days that the Settlement Payment is late. If the Settlement Payment is more
9 than seven (7) days late, beginning on the eighth day the Settlement Payment is late, in addition to
10 the late payments for day 1-7, BAC shall be and hereby is deemed liable for, and shall pay DTSC,
11 five thousand dollars (\$5,000) per day for each additional day the Settlement Payment is late.

12 **4. INJUNCTION**

13 BAC shall be, and is enjoined as follows:

14 **GENERAL INJUNCTIVE PROVISION:**

15 4.1 Pursuant to the provisions of the Health and Safety Code sections 25181 and 25184,
16 BAC shall comply with Chapter 6.5 of Division 20 of the Health and Safety Code (Health & Saf.
17 Code §25100 et seq.) and the regulations promulgated under this chapter (Cal. Code Reg., tit. 22,
18 § 66000 et seq.) at, and in connection with, the operations of the BAC manufacturing facility at
19 15341 Road 28 1/2 in the County of Madera, State of California ("the Facility").

20 **SPECIFIC INJUNCTIVE PROVISIONS:**

21 4.2 BAC shall immediately clean up and report any release or threatened release of a
22 hazardous material or hazardous waste at or from the Facility as required by Health and Safety
23 Code section 25507 and California Code of Regulations, Title 19, sections 2703 and 2705.

24 4.3 BAC shall comply with the employee training requirements as mandated by
25 California Code of Regulations, Title 22, section 66265.16 and California Code of Regulations,
26 Title 8, section 5194(h), pertaining to the management of hazardous waste. BAC shall maintain
27 employee training records as required by these regulations.

28 4.4 BAC shall manage containers of hazardous waste at the Facility in accordance with
the provisions of California Code of Regulations, Title 22, sections 66262.34 and 66265.173.

1 BAC shall conduct weekly inspections of hazardous waste storage areas at the Facility as
2 required by California Code of Regulations, Title 22, section 66265.174.

3 4.5 BAC shall properly and timely dispose of accumulated hazardous waste at the
4 Facility as required by California Code of Regulations, Title 22, section 66262.34.

5 4.6 BAC shall obtain any written assessments and/or reassessments required by
6 California Code of Regulations, Title 22, section 66265.192, reviewed and certified by an
7 independent, qualified, professional engineer, registered in California, attesting that the hazardous
8 waste tank system or components used at the Facility have sufficient structural integrity, are
9 acceptable for the waste handling activity, and are suitably designed.

10 4.7 BAC shall maintain secondary containment for all hazardous waste tank systems or
11 components at the Facility as required by California Code of Regulations, Title 22, section
12 66265.193.

13 4.8 BAC shall conduct daily inspections of hazardous waste tanks systems, data
14 monitoring and leak detection equipment, and the surrounding areas at the Facility as required by
15 California Code of Regulations, Title 22, section 66265.195.

16 4.9 BAC shall document the daily inspections referred to in paragraph 2.8 herein in the
17 operating record of the Facility as required by California Code of Regulations, Title 22, section
18 66265.195(c).

19 4.10 BAC shall provide employees at the Facility's hazardous waste treatment area
20 immediate access to an internal alarm or emergency device as required by California Code of
21 Regulations, Title 22, section 66265.34(a).

22 4.11 BAC shall post a sign at the Facility's outdoor hazardous waste treatment area
23 stating: "Hazardous Waste Area – Unauthorized Personnel Keep Out" as required by California
24 Code of Regulations, Title 22, section 66265.14(c).

25 4.12 BAC shall comply with all record-keeping requirements of California Code of
26 Regulations, Title 22, section 66262.40 for the Facility.

1 4.13 BAC shall properly prepare, process, and maintain copies of all hazardous waste
2 manifests in accordance with California Code of Regulations, Title 22, sections 66262.20,
3 66262.23, and 66262.40(a).

4 4.14 BAC shall not transport hazardous waste or offer hazardous waste for transportation
5 off-site unless BAC has complied with the provisions of California Code of Regulations, Title 22,
6 sections 66262.30, 66262.31, 66262.32, and 66262.33.

7 4.15 BAC shall not dispose of hazardous waste except at an authorized point as provided
8 pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq.

9 4.16 BAC shall not transport hazardous waste or transfer custody of a hazardous waste to a
10 transporter unless such transport is by a properly licensed and registered hazardous waste
11 transporter as required by Health and Safety Code section 25163.

12 4.17 BAC shall permanently mark all hazardous waste treatment units with the name of
13 the person who owns or operates the units, the Facility identification number, and individual
14 serial number as required by California Code of Regulations, Title 22, section 67450.3(c)(7).

15 4.18 BAC shall label containers of hazardous waste as "Hazardous Waste" as required by
16 California Code of Regulations, Title 22, section 66262.34(f) and shall keep all containers of
17 hazardous waste closed except when adding or removing waste.

18 4.19 BAC shall have an up-to-date list in the Facility's contingency plan of all persons
19 qualified to act as emergency coordinator as required by California Code of Regulations, Title 22,
20 sections 66265.52(d) and review and amend the contingency plan when the list of emergency
21 coordinators changes as required by California Code of Regulations, Title 22, section 66265.54.

22 4.21 Within six months of the entry of this Judgment, all officers and employees having
23 responsibility for, or oversight of, hazardous waste management at the Facility must attend and
24 successfully complete Modules I-V relating to hazardous waste at the California Compliance
25 School unless they have attended the California Compliance School and passed the relevant
26 modules within the last five years. Within six months of entry of this Judgment, BAC shall
27 submit documentation to DTSC showing compliance with this paragraph.
28

1 4.22 Within 30 days of entry of this Judgment, BAC shall provide DTSC a list with the
2 names of those employees covered by paragraph 4.21 above who have completed the relevant
3 California Compliance School modules and those employees who will be attending California
4 Compliance School.

5 4.23 Any officer or employee promoted, otherwise assuming responsibility for, or
6 oversight of, hazardous waste management after this Judgment must attend and successfully
7 complete Modules I-V relating to hazardous waste at the California Compliance School within six
8 months of their hire, promotion, or assumption of responsibility unless they have attended the
9 California Compliance School and passed the relevant modules within the last five years before
10 the date of their hiring, promotion, or assumption of responsibility. This paragraph only applies
11 to an officer or employee who is subject to the requirements of California Code of Regulations,
12 Title 22, section 66265.16(d)(1).

13 **OTHER PROVISIONS**

14 **5. Retention of Jurisdiction**

15 The Court shall retain jurisdiction of this matter to implement the Final Judgment.

16 **6. Enforcement of Judgment**

17 Any party may, by motion or order to show cause before the Superior Court of Madera
18 County, enforce the terms and conditions contained in this Final Judgment. Where a failure to
19 comply with this Final Judgment constitutes future violations of the HWCL, or other laws
20 independent of this Final Judgment, DTSC is not limited to enforcement of this Final Judgment,
21 but may seek in another action, subject to satisfaction of any procedural requirements, fines,
22 costs, fees, penalties, injunctive relief or remedies as provided by law for failure to comply with
23 the HWCL, its implementing regulations, or other laws.

24 **7. Modification**

25 This Final Judgment may be modified by express written agreement of the Parties, with the
26 approval of the Court, or by an order of this Court in accordance with law.

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8. Entry of Judgment

The Clerk of the Court is ordered to enter forthwith this Final Judgment, and to provide promptly to the Parties, notice of entry of the Final Judgment.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: NOV 29 2011 JAMES E. OAKLEY
Judge of the Superior Court

EXHIBIT A

1 KAMALA D. HARRIS
Attorney General of the State of California
2 J. MATTHEW RODRIQUEZ
Chief Assistant Attorney General
3 SALLY MAGNANI
Acting Senior Assistant Attorney General
4 MARGARITA PADILLA
Supervising Deputy Attorney General
5 SANDRA GOLDBERG, State Bar No. 138632
KIRK MCINNIS, State Bar No. 130952
6 Deputy Attorneys General
1515 Clay Street, 20th Floor
7 P.O. Box 70550
Oakland, CA 94612-0550
8 Telephone: (510) 622-2145
Fax: (213) 622-2270
9 Email: Sandra.Goldberg@doj.ca.gov

**EXEMPT FROM
FILING FEES
GOVERNMENT CODE § 6103**

10 *Attorneys for Plaintiff, People of the State of*
California, ex rel. Debbie Raphael, Director,
11 *California Department of Toxic Substances Control*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MADERA
14

15 PEOPLE OF THE STATE OF CALIFORNIA,
16 ex rel. Debbie Raphael, Director, California
Department of Toxic Substances Control,
17 Plaintiff,

17 v.

18 BALTIMORE AIRCOIL COMPANY, INC., a
19 Delaware Corporation.

20 Defendant.

Case No.

STIPULATION FOR ENTRY OF FINAL
JUDGMENT ON CONSENT

21 This Stipulation for Entry of Final Judgment on Consent ("Stipulation") is entered into
22 by and between, Plaintiff People of the State of California, ex rel. Debbie Raphael, Director,
23 California Department of Toxic Substances Control ("DTSC") and Defendant Baltimore
24 Aircoil Company, Inc. ("BAC"). DTSC and BAC, collectively "the Parties," have agreed to
25 settle this matter without further litigation on the terms set forth below.
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1 **A. JURISDICTION**

2 DTSC and BAC stipulate and agree that the Superior Court of the State of California for
3 the County of Madera (the “Court”) has subject matter jurisdiction over the matters alleged in
4 the Complaint and personal jurisdiction over the Parties.

5 BAC waives its right to a hearing and appeal in this matter.

6 **B. SETTLEMENT OF DISPUTED CLAIMS**

7 DTSC and BAC enter into this Stipulation pursuant to a compromise and settlement of
8 disputed claims for purposes of furthering the public interest. DTSC believes that the resolution
9 embodied in this Stipulation is fair and reasonable and fulfills DTSC’s enforcement objectives;
10 that except as provided in this Stipulation, no further action is warranted concerning the
11 allegations contained in the Complaint; and that entry of the Consent Judgment as provided in
12 this Stipulation is in the best interest of the public. BAC agrees that this Stipulation and the
13 Final Judgment and Permanent Injunction Pursuant to Stipulation entered thereon, a copy of
14 which is attached as Exhibit A (“Consent Judgment”), are a fair and reasonable resolution of the
15 matters alleged in the Complaint.

16 **C. DEFINITIONS**

17 Except where otherwise expressly defined herein, all terms in this Stipulation and Consent
18 Judgment shall be interpreted consistent with Chapter 6.5 of Division 20 of the Health and
19 Safety Code and the regulations promulgated under this chapter, Health & Safety Code sections
20 25100 et seq. and Cal. Code of Reg., tit. 22, section 66000 et seq.

- 21 1. “The Facility” means the BAC manufacturing facility at 15341 Road 28 1/2 in the
22 County of Madera, State of California.
- 23 2. “Hazardous Material,” as used herein, means “hazardous material” as that term is
24 defined in Health and Safety Code section 25501(o).
- 25 3. “Hazardous Waste,” as used herein, shall have the definition as provided for in
26 Health and Safety Code section 25117.
- 27 4. “Hazardous Waste Management,” and “management” as used herein, shall have the
28 definition as provided for in Health and Safety Code section 25117.2.

1 **D. SETTLEMENT PAYMENT**

2 BAC is liable for a total of seven hundred and fifty thousand dollars (\$750,000) in civil
3 penalties to be paid as set forth herein.

4 **1. SETTLEMENT PAYMENT**

5 Within thirty (30) calendar days of entry of the Consent Judgment in this matter," BAC
6 shall pay to DTSC seven hundred and fifty thousand dollars (\$750,000) as the Settlement
7 Payment. This payment shall be made by cashier's check, payable to "the Department of Toxic
8 Substances Control," and mailed to:

9 Cashier
10 Accounting Office
11 Department of Toxic Substances Control
12 P.O. Box 806
13 Sacramento, CA 95812-0806

14 A copy of the check shall be sent to:

15 Charles A. McLaughlin, Performance Manager
16 State Oversight and Enforcement Branch
17 Enforcmeent and Emergency Response Program
18 Department of Toxic Substances Control
19 8800 Cal Center Drive, MS R1-3
20 Sacramento, CA 95826-3200

21 Kirk McInnis
22 Deputy Attorney General
23 Office of the Attorney General
24 1515 Clay Street, 20th Floor
25 Oakland, CA 94612-0550

26 The check for the Settlement Payment shall bear the name of this case and court number.

27 **2. LATE PAYMENTS**

28 BAC shall be and is hereby deemed liable for and shall pay DTSC \$1,000 per day for the
first seven (7) days that the Settlement Payment is late. If the Settlement Payment is more than
seven (7) days late, beginning on the eighth day the Settlement Payment is late, in addition to
the late payments for day 1-7, BAC shall be and is hereby deemed liable for, and shall pay
DTSC, five thousand dollars (\$5,000) per day for each additional day the Settlement Payment
is late.

1 **E. INJUNCTIVE RELIEF**

2 **1. GENERAL INJUNCTIVE PROVISIONS**

3 BAC shall be, and is enjoined as follows:

4 Pursuant to the provisions of the Health and Safety Code sections 25181 and 25184, BAC shall
5 comply with Chapter 6.5 of Division 20 of the Health and Safety Code (Health & Saf. Code
6 §25100 et seq.) and the regulations promulgated under this chapter (Cal. Code Reg., tit. 22, §
7 66000 et seq.) at, and in connection with, the operations of the Facility. Failure to comply with
8 the specific injunctive provisions that follow may subject BAC to the enforcement provisions set
9 forth below.

10 **2. SPECIFIC INJUNCTIVE PROVISIONS**

11 2.1 BAC shall immediately clean up and report any release or threatened release of a
12 hazardous material or hazardous waste at or from the Facility as required by Health and Safety
13 Code section 25507 and California Code of Regulations, Title 19, sections 2703 and 2705.

14 2.2 BAC shall comply with the employee training requirements as mandated by
15 California Code of Regulations, Title 22, section 66265.16 and California Code of Regulations,
16 Title 8, section 5194(h), pertaining to the management of hazardous waste. BAC shall maintain
17 employee training records as required by these regulations.

18 2.3 BAC shall manage containers of hazardous waste at the Facility in accordance with
19 the provisions of California Code of Regulations, Title 22, sections 66262.34 and 66265.173.

20 2.4 BAC shall conduct weekly inspections of hazardous waste storage areas at the
21 Facility as required by California Code of Regulations, Title 22, section 66265.174.

22 2.5 BAC shall properly and timely dispose of accumulated hazardous waste at the
23 Facility as required by California Code of Regulations, Title 22, section 66262.34.

24 2.6 BAC shall obtain any written assessments and/or reassessments required by
25 California Code of Regulations, Title 22, section 66265.192, reviewed and certified by an
26 independent, qualified, professional engineer, registered in California, attesting that the hazardous
27 waste tank system or components used at the Facility have sufficient structural integrity, are
28 acceptable for the waste handling activity, and are suitably designed.

1 2.7 BAC shall maintain secondary containment for all hazardous waste tank systems or
2 components at the Facility as required by California Code of Regulations, Title 22, section
3 66265.193.

4 2.8 BAC shall conduct daily inspections of hazardous waste tanks systems, data
5 monitoring and leak detection equipment, and the surrounding areas at the Facility as required by
6 California Code of Regulations, Title 22, section 66265.195.

7 2.9 BAC shall document the daily inspections referred to in paragraph 2.8 herein in the
8 operating record of the Facility as required by California Code of Regulations, Title 22, section
9 66265.195(c).

10 2.10 BAC shall provide employees at the Facility's hazardous waste treatment area
11 immediate access to an internal alarm or emergency device as required by California Code of
12 Regulations, Title 22, section 66265.34(a).

13 2.11 BAC shall post a sign at the Facility's outdoor hazardous waste treatment area
14 stating: "Hazardous Waste Area – Unauthorized Personnel Keep Out" as required by California
15 Code of Regulations, Title 22, section 66265.14(c).

16 2.12 BAC shall comply with all record-keeping requirements of California Code of
17 Regulations, Title 22, section 66262.40 for the Facility.

18 2.13 BAC shall properly prepare, process, and maintain copies of all hazardous waste
19 manifests in accordance with California Code of Regulations, Title 22, sections 66262.20,
20 66262.23, and 66262.40(a).

21 2.14 BAC shall not transport hazardous waste or offer hazardous waste for transportation
22 off-site unless BAC has complied with the provisions of California Code of Regulations, Title 22,
23 sections 66262.30, 66262.31, 66262.32, and 66262.33.

24 2.15 BAC shall not dispose of hazardous waste except at an authorized point as provided
25 pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 *et seq.*

26 2.16 BAC shall not transport hazardous waste or transfer custody of a hazardous waste to
27 a transporter unless such transport is by a properly licensed and registered hazardous waste
28 transporter as required by Health and Safety Code section 25163.

1 2.17 BAC shall permanently mark all hazardous waste treatment units with the name of
2 the person who owns or operates the units, the Facility identification number, and individual
3 serial number as required by California Code of Regulations, Title 22, section 67450.3(c)(7).

4 2.18 BAC shall label containers of hazardous waste as "Hazardous Waste" as required by
5 California Code of Regulations, Title 22, section 66262.34(f) and shall keep all containers of
6 hazardous waste closed except when adding or removing waste.

7 2.19 BAC shall have an up-to-date list in the Facility's contingency plan of all persons
8 qualified to act as emergency coordinator as required by California Code of Regulations, Title 22,
9 sections 66265.52(d) and review and amend the contingency plan when the list of emergency
10 coordinators changes as required by California Code of Regulations, Title 22, section 66265.54.

11 **3. ENVIRONMENTAL COMPLIANCE SCHOOL**

12 3.1 Within six months of the entry of the Court's Consent Judgment in this matter, all
13 officers and employees having responsibility for, or oversight of, hazardous waste management at
14 the Facility must attend and successfully complete Modules I-V relating to hazardous waste at the
15 California Compliance School unless they have attended the California Compliance School and
16 passed the relevant modules within the last five years. Within six months of entry of the Court's
17 Consent Judgment in this matter, BAC shall submit documentation to DTSC showing compliance
18 with this paragraph.

19 3.2 Within 30 days of entry of the Court's Consent Judgment in this matter, BAC shall
20 provide DTSC a list with the names of those employees covered by paragraph 2.1 above who
21 have completed the relevant California Compliance School modules and those employees who
22 will be attending California Compliance School.

23 3.3 Any officer or employee promoted, otherwise assuming responsibility for, or
24 oversight of, hazardous waste management after the entry of the Court's Consent Judgment in
25 this matter must attend and successfully complete Modules I-V relating to hazardous waste at the
26 California Compliance School within six months of their hire, promotion, or assumption of
27 responsibility unless they have attended the California Compliance School and passed the
28 relevant modules within the last five years before the date of their hiring, promotion, or

1 assumption of responsibility. This paragraph only applies to an officer or employee who is
2 subject to the requirements of California Code of Regulations, Title 22, section 66265.16(d)(1).

3 **F. ENFORCEMENT OF CONSENT JUDGMENT**

4 1. DTSC has the right to enforce the Consent Judgment as provided herein and
5 pursuant to applicable law.

6 2. Before pursuing any action to enforce any of the terms of the Consent Judgment,
7 DTSC shall meet and confer with BAC in a good faith attempt to resolve the issue without
8 judicial intervention. To ensure that the meet and confer process is as productive as possible,
9 DTSC will identify, at least ten (10) days in advance of the meet and confer, as specifically as
10 the available information allows, the grounds for its enforcement action, the actions that DTSC
11 believe BAC must take to remedy its non-compliance, and the specific relief, if any, sought by
12 DTSC.

13 3. BAC reserves all rights to oppose any motion brought by DTSC to enforce any
14 provisions of the Consent Judgment.

15 **G. EFFECT OF CONSENT JUDGMENT**

16 Other than "Covered Matters" as defined in Paragraph H.1 below, nothing herein is intended,
17 nor shall it be construed, to preclude DTSC, or any state, county, or local agency, department,
18 board, or entity from exercising its authority under any law, statute, or regulation.

19 **H. MATTERS COVERED AND RESERVED CLAIMS**

20 1. The Consent Judgment entered in this matter is a final and binding resolution and
21 settlement of all claims, violations, and causes of action alleged by DTSC against BAC in the
22 Complaint through the date of July 28, 2009, against BAC, its officers, employees, agents, and
23 attorneys. The matters described in the previous sentence are "Covered Matters." DTSC reserves
24 the right to pursue any claim, violation, or cause of action that is not a Covered Matter ("Reserved
25 Claims"). Claims, violations, or causes of action against independent contractors of BAC, if any,
26 are not resolved by this Consent Judgment.

1 2. Any claims, violations, or causes of action that are not alleged in the Complaint
2 against BAC, including, but not limited to, any alleged violations that occurred after July 28,
3 2009, are not resolved, settled, or covered by this Consent Judgment.

4 3. Notwithstanding any other provision of this Consent Judgment, Reserved Claims
5 include, but are not limited to, any claims or causes of action for: a) performance of corrective
6 action, response action, or recovery of costs of actions, concerning or arising out of actual past
7 or future releases, spills, leaks, discharges, or disposal of hazardous materials, hazardous
8 wastes, and/or hazardous substances; and b) claims or causes of action relating to the disposal
9 of hazardous materials, hazardous wastes, and/or hazardous substances, by BAC, where such
10 disposal is unknown to DTSC as of the date of entry of this Consent Judgment.

11 4. In any subsequent action that may be brought in the name of DTSC based on any
12 Reserved Claims, BAC agrees that it will not assert that the failure to pursue the Reserved
13 Claims as part of this action constitutes claim-splitting or laches or is otherwise inequitable
14 because of this asserted failure. This Paragraph does not bar BAC from asserting any statute of
15 limitations that may be applicable to any Reserved Claims or any other defense.

16 5. BAC covenants not to pursue any civil or administrative claims against DTSC or
17 against any governmental unit of the State of California, any counties or municipalities in the
18 State of California, or against their officers, employees, representatives, agents, or attorneys for
19 actions taken against BAC arising out of or related to Covered Matters.

20 **I. NOTICE**

21 1. All submissions and notices required by this Permanent Injunction shall be sent to:

22 a. For Plaintiff:

23 Charles A. McLaughlin, Performance Manager
24 State Oversight and Enforcement Branch
25 Enforcement and Emergency Response Program
26 Department of Toxic Substances Control
27 8800 Cal Center Drive, MS R1-3
28 Sacramento, CA 95826-3200

1 b. For BAC :

2 Marvin Tignor, Vice President, Operations
3 Baltimore Aircoil Company, Inc.
4 7600 Dorsey Run Road
5 Jessup, MD 20794

6 Any party may change its notice and name and address by informing the other
7 parties in writing by certified mail. The change shall be effective upon receipt of the certified
8 mail.

9 2. All notices and communications required or permitted under the Consent Judgment
10 that are properly addressed as provided in this section are effective upon delivery if delivered
11 personally or by overnight delivery, or are effective five (5) days following deposit in the United
12 States mail, postage prepaid, if delivered by mail, or are effective the next court day that
13 electronic mail is sent before 5 p.m. (PST) to the electronic mail addresses of the designated
14 recipient for notice concurrent with sending the notice by United States mail.

15 **J. NECESSITY FOR WRITTEN APPROVALS**

16 All notices, approvals, and decisions of DTSC under the terms of this Stipulation or the
17 Consent Judgment shall be communicated to BAC in writing. No oral advice, guidance,
18 suggestions, or comments by employees or officials of DTSC regarding submissions or notices
19 shall be construed to relieve BAC of its obligations to obtain any final written approval required
20 by this Stipulation or the Consent Judgment.

21 **K. NO LIABILITY OF DTSC**

22 DTSC shall not be liable for any injury or damage to persons or property resulting from
23 acts or omissions by BAC or their respective officers, directors, employees, agents,
24 representatives, contractors, successors, or assigns, in carrying out activities pursuant to the
25 Consent Judgment, nor shall DTSC be held as a party to or guarantor of any contract entered into
26 by BAC or their respective officers, directors, employees, agents, representatives, contractors,
27 successors, or assigns, in carrying out the requirements of this Stipulation or the Consent
28 Judgment.

1 **L. NO WAIVER OF RIGHT TO ENFORCE**

2 The failure of DTSC to enforce any provision of this Stipulation or the Consent Judgment shall
3 neither be deemed a waiver of such provision, nor in any way affect the validity of this
4 Stipulation or the Consent Judgment. The failure of DTSC to enforce any such provision shall
5 not preclude it from later enforcing the same or other provisions of this Stipulation or the
6 Consent Judgment. No oral advice, guidance, suggestions, or comments by employees or
7 officials of DTSC or BAC, or people or entities acting on behalf of BAC, regarding matters
8 covered in this Stipulation or the Consent Judgment shall be construed to relieve BAC of its
9 obligations under this Stipulation or the Consent Judgment.

10 **M. FUTURE REGULATORY CHANGES**

11 Nothing in this Stipulation or the Consent Judgment shall excuse BAC from meeting any
12 more stringent requirements that may be imposed by changes in applicable law.

13 **N. APPLICATION OF CONSENT JUDGMENT**

14 This Stipulation and the Consent Judgment shall apply to and be binding upon DTSC and
15 upon BAC, and upon its officers, managers, employees, agents, contractors, successors, and
16 assigns.

17 **O. AUTHORITY TO ENTER INTO STIPULATION**

18 Each signatory to this Stipulation certifies that he or she is fully authorized by the party he
19 or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and
20 to legally bind that party.

21 **P. CONTINUING JURISDICTION**

22 The Parties agree that this Court has continuing jurisdiction to interpret and enforce this
23 Stipulation and the Consent Judgment. The Court shall retain continuing jurisdiction to enforce
24 the terms of this Stipulation and the Consent Judgment and to address any other matters arising
25 out of or regarding this Stipulation and the Consent Judgment.

26 **Q. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

27 BAC shall permit any duly authorized representative of DTSC to inspect and copy BAC's
28 records and documents to determine whether BAC is in compliance with the terms of this

1 Stipulation and the Consent Judgment. Nothing in this Paragraph is intended to require access to
2 or production of any privileged documents.

3 **R. INTERPRETATION OF STIPULATION AND CONSENT JUDGMENT**

4 This Stipulation and the Consent Judgment were drafted equally by the signatories hereto.
5 The signatories agree that the rule of construction holding that ambiguity is construed against the
6 drafting party shall not apply to the interpretation of this Stipulation and the Consent Judgment.

7 **S. COUNTERPART SIGNATURES**

8 This Stipulation may be executed in counterpart signatures.

9 **T. INTEGRATION**

10 This Stipulation and the Consent Judgment constitutes the entire agreement between
11 DTSC and BAC with respect to the matters alleged in the Complaint and may not be amended or
12 supplemented except as provided for in this Stipulation or the Consent Judgment.

13 **U. MODIFICATION OF CONSENT JUDGMENT**

14 The Consent Judgment may be modified by express written agreement of the Parties, with
15 the approval of the Court, or by an order of the Court in accordance with law.

16 **V. COSTS AND ATTORNEYS' FEES**

17 Each Party to this Stipulation and Consent Judgment shall bear its own costs and
18 attorneys' fees.
19

20 **IT IS SO STIPULATED**

21 Plaintiff, People of the State of California, ex rel. Debbie Raphael, Director, California
22 **Department of Toxic Substances Control**

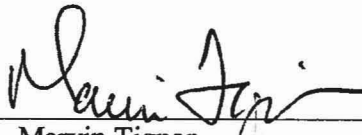
23 DATED: _____

24 By: _____
25 Susan J. Laney
26 Assistant Deputy Director
27 Plaintiff People of the State of California, ex rel.
28 Debbie Raphael, Director, California Department
of Toxic Substances Control

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Baltimore Aircoil Company, Inc.:

DATED: 9/2/11

By: 
Marvin Tignor
Vice President, Operations